

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CLEMENT COOPER,

Petitioner,

CASE NO. 2:06-cv-718

JUDGE HOLSCHUH

MAGISTRATE JUDGE KING

v.

WARDEN, NOBLE CORRECTIONAL  
INSTITUTION,

Respondent.

**OPINION AND ORDER**

On July 5, 2007, the Magistrate Judge issued a *Report and Recommendation* recommending that all of petitioner's claims, with the exception of his claim that he was denied the effective assistance of counsel because his attorney failed to file an appeal after being requested to do so, be dismissed, and that petitioner be appointed counsel to represent him at an evidentiary hearing on that claim. Doc. No. 9.

Respondent has filed objections to the Magistrate Judge's *Report and Recommendation*. Respondent objects solely to the Magistrate Judge's recommendation that an evidentiary hearing be conducted on petitioner's claim of ineffective assistance of counsel for failure to file an appeal. Respondent again contends that *Deitz v. Money*, 391 F.3d 804 (6<sup>th</sup> Cir. 2004), requires petitioner to describe his allegation in further detail than he has already done.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions of the *Report and Recommendation* objected to. Upon review of the record, and for the reasons discussed in the Magistrate Judge's *Report and Recommendation*, respondent's objections are **OVERRULED**.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. All of petitioner's claims, with the exception of his claim that he was denied the effective assistance of counsel due to his attorney's failure to file an appeal after being requested to do so are **DISMISSED**. Petitioner is to be appointed counsel to represent him at an evidentiary hearing on his claim of ineffective assistance of counsel due to his attorney's failure to file an appeal.

**IT IS SO ORDERED.**

Date: August 3, 2007

/s/ John D. Holschuh  
JOHN D. HOLSCHUH  
United States District Judge